

LFC Requester:**Julia Downs****AGENCY BILL ANALYSIS
2016 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:****LFC@NMLEGIS.GOV***and***DFA@STATE.NM.US***{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}**Check all that apply:*Original ☒ Amendment ☐
Correction ☐ Substitute ☐**Date** 1/27/16**Bill No:** SB 202**Sponsor:** Sen. B. O'Neill; Sen. S. Clahchischilliage
Short Title: Hate Crimes Against Homeless People**Agency Code:** 305**Person Writing** Nicholas K. Gilbert, AAG
Phone: 827-6716 **Email** ngilbert@nmag.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB 95
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

SB 202 makes two changes to the Hate Crimes Act .

SB 202 in Section 2 strikes “handicapped status” and replaces it with “disability” to make the language in the Act uniform throughout. This is a technical fix, which cleans the Act up.

SB 202 in Section 2 (D) defines “homelessness” to mean a person without fixed, regular, and adequate nighttime residence, or who sleeps in a place not ordinarily used as a sleeping accommodation for humans, or who sleeps at a homeless shelter. In Section 2 (E) adds homeless persons as a category of victims against whom a hate crime can be committed.

In Section 3, SB 202 modifies the titles of section 31-18B-3.

SB 202 neither changes the term of enhancement nor its discretionary status with respect to any of the enumerated classes of victims.

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

None. So long as there is a rational basis to treat crimes committed against homeless persons differently than crimes committed against everyone else, the law should survive constitutional challenge. *See State v. Vogenthaler*, 1976-NMCA-030, ¶ 14. Further, SB 202 applies the required beyond-a-reasonable-doubt standard for hate crimes against homeless persons.

Currently, where a finder of fact determines that a non-capital felony is motivated by hate (hereinafter hate crime), the Hate Crimes Act (Act) allows, but does not require, a court to increase the non-capital felony’s basic sentence by one year for a first offense. Upon conviction for a second hate crime, the non-capital felony’s basic sentence may be increased by two years. Whether a person’s first or second hate crime, where a court imposes the enhancement, it may also suspend or defer some or all of the enhancement. Accordingly, there is no mandatory term of incarceration under the Act.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 95 provides for the same technical fix as SB 202 (“handicapped status” to “disability”), but adds law enforcement officers rather than homeless persons to the categories of victims against whom a hate crime can be committed. Otherwise, HB 95 does not conflict with SB 202.

TECHNICAL ISSUES None.

OTHER SUBSTANTIVE ISSUES None.

ALTERNATIVES HB 95.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL Status quo.

AMENDMENTS